

January 21st, 2013

VIA ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Room TW-A325
Washington, DC 20554

CC Docket 02-6

Re: Request for Review/Petition for Reconsideration

Callisburg ISD (CISD) (Billed Entity Number 140927) is requesting a review of the Commission of the decision issued by USAC for two FRNs (information below). The reason for denial for both FRNs is listed as *“Consistent with FCC Order DA 12-259, the FCC has determined that your competitive bidding process was flawed due to improper service provider involvement in the competitive bidding process that led to this contract.”*

Allegations of gift-giving by the service provider, as well as contact by the service provider before and during the competitive bidding process were made by USAC. However, FCC order 12-259 merely states that “Consistent with precedent...we deny two requests from CISD and its service provider.”¹ **The FCC never explained what the “improper service provider involvement” was.** Because USAC made different allegations (gift giving, service provider contact before 470 posting, service provider contact after 470 posting) we do not know which actions the FCC considers to be violations of the bidding process, and why.

CISD subsequently filed a Petition for Reconsideration requesting, among other items, a reasonable description of those conditions that led to a denial. We are still awaiting the FCC’s response.

Therefore, CISD requests the FCC to review the decision of the administrator/and or a Petition of Reconsideration of DA 12-259 for the following FRNs:

- FRN 2131815, 471 # 787774
- FRN 2251719, 471 # 828542

¹ DA 12-259, Adopted and Released 2/23/2012

We submit the following responses to the Commission related to USAC's decision to deny the two FRNs as related to DA 12-259:

1. The Commission, in The Order, failed to provide detailed reasoning (as required) for its decision. The Commission merely states that consistent "with precedent" the Requests for Review and the Requests for Waiver are denied. CISD hereby requests an adequate description for the reason for denial. Absent this description, CSID is unable to exercise its right to issue an informed appeal/petition of the decisions of the Administrator.
2. The Commission cites five FCC orders as "precedent" for its decision (see footnote #1 of The Order). None of the orders cited as precedent are applicable for the issue at hand. These orders focus on service provider involvement as the contact person in the application, or "steering" the applicants to file for something they did not need.
3. Communication between The District and Trillion that happened before the Form 470 was posted was all focused on an existing contract, and proper levels of service provided under that contract. In addition, service providers are allowed to discuss product offering with potential customers before a 470 is posted.
4. Communication during the open 470 time period did not compromise the competitive bidding process. A fair and open bidding competitive bidding process was conducted, and all potential service providers did indeed have **access** to the same information². There was no disproportionate access to information; all potential bidders had the same methods of accessing that information. There were only two bidders in the process, Trillion and Norlight. Norlight had access to the same information as Trillion did through the contact mechanisms listed on the form 470 (phone, email address). Norlight chose not to ask any questions. Had they asked the same questions, they would have received the same answers (in fact, they wouldn't have even had to ask the same questions, they simply could have asked "Have you provided any information to other potential bidders? If so, please provide that information to us"). It was not functionally more difficult for any other bidder to obtain the same information.
5. Fostering communication between applicants and service providers during the competitive bidding process leads to the Commission's goal of cost effective proposals.³ In fact, this communication is a critical component of the bidding process.
6. The applicant has no affirmative duty to publish information to all potential service providers, nor does USAC provide a method to do so. Once the applicant has filed the Form 470, it is static and cannot be changed. The applicant would have no way of knowing if potential service providers need additional information to place a cost-effective bid. Potential vendors quite frequently have different "requirements" that they need to be able to place an informed bid (such as a zip code, or actual physical address for a terminating point of a circuit, or NPA/NXX information). Other service providers can provide a cost effective bid without such information. Placing additional burdens on the applicants (who often are not purchasing specialists and are quite often overworked

² The Commission recognizes this standard In The Order. Footnote #1 states: "All potential bidders and service providers must have **access** to the same information and must be treated in the same manner throughout the procurement process" (emphasis added).

³ Request for Review by MasterMind Internet Services, Inc., Federal-State Joint Board on Universal Service, 2000 (MasterMind Order). The commission held that "If a bidder cannot, because it lacks critical information, determine how to best serve the applicant's requirements, the bidder cannot prepare a cost-effective proposal, thereby failing to achieve the intended goals of the competitive bidding process."

and doing multiple different jobs⁴), simply because they answered a question from a service provider places the applicant in a Catch-22 position where the applicant now has to weigh the risks of providing more information (something that the FCC has found important to fostering cost effective bids in the MasterMind decision), which apparently can lead to a competitive bidding denial, or simply ignoring the question so as not to “share” information with one service provider but not others. This is simply an untenable position for Applicants. If the Commission’s standards are that a fair and open process requires the dissemination of answers to questions to all potential service providers, then the Commission should develop a vehicle for this communication.

7. Predictability and guidance should be key factors in the Commission’s reasoning. Of course, an applicant could post a “Q&A” section to its web site, but potential vendors would have no idea where to look for this information (remember, the Form 470 is static once posted, and the Applicant would presumably not have checked off the “RFP is available” box). The applicant then runs the risk of USAC seeing these “answers” as an Request For Proposal – especially if the questions were technical in nature (please also note that the Commission has failed to define when a set of answers are technical enough to “become” an RFP). Posting such answers without indicating that an RFP is available on the Form 470 is risky at best, and could require a re-start of the 28-day mandatory bidding window. The Commission should not punish an applicant for fostering communication during the competitive bidding process. This standard of review could be accomplished by a simple question during an inquiry by USAC about the competitive bidding process: “Were there any questions you did or did not answer from potential bidders during your competitive bidding process?” USAC could then look at the totality of the communication and determine if potential vendors were treated in an open and fair manner.

We ask that the Commission reverse its previous findings that Callisburg did not conduct a fair and open competitive bidding process, and in lieu of that finding, we ask for a Waiver of the Commission’s Rules.

Respectfully,

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⁴ Don Metzler, the contact person on the District’s 471 is the Director of Curriculum and Instruction. He is responsible for managing all of the IT staff, teacher evaluations, textbook selection/curriculum development and Title I and II programs.